

Let's in

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF CHANGE APPLICATION)

MEMORANDUM DECISION

NUMBER 51-7805 (a27887))

Change Application Number 51-7805 (a27887), in the names of Randy and Donna Butler and Spanish Fork City, was filed on May 13, 2003, to change the point of diversion, place of use, and nature of use of 355.0 acre-feet of water. Heretofore, the water has been diverted from Wylie Springs, Thomas Springs, and Butler Springs, located: (1) South 1353 feet and West 5677 feet; (2) South 759 feet and West 116 feet both from the NE Corner of Section 31; and (3) East 125 feet from the W $\frac{1}{4}$ Corner of Section 31, all in T8S, R2E, SLB&M, and used for the irrigation of 88.75 acres from April 1 to October 31 in the NE $\frac{1}{4}$, and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 25; the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 36, T8S, R2E, SLB&M; the SW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 30; and the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 31, T8S, R3E, SLB&M.

Hereafter, it is proposed to divert 355.0 acre-feet of water from Malcolm Springs located South 500 feet from the NE Corner of Section 3, T9S, R3E, SLB&M; from Cold Spring located North 4,661 feet and West 41 feet from the N $\frac{1}{4}$ Corner of Section 12, T9S, R3E, SLB&M; from Lower Crab Creek Spring located North 1,706 feet and East 75 feet from the SW Corner of Section 1, T10S, R3E, SLB&M; from Upper Crab Creek Spring located South 1,050 feet and West 3,100 feet from the NE Corner of Section 2, T10S, R3E, SLB&M; and from Darger Spring located South 795 feet and East 432 feet from the NW Corner of Section 34, T8S, R3E, SLB&M. The water is to be used for municipal purposes in Spanish Fork City.

The application was advertised in The Spanish Fork Press on May 29, 2003, and June 5, 2003, and was protested by the Spanish Fork Joint River Committee. In the protest concern is expressed that this is a supplemental supply, the only water that can be traded on this is Lake Shore Irrigation Company water, and the Darger Springs should be considered part of the flow of the Spanish Fork River.

The State Engineer has reviewed the change application, the underlying water rights, and the protest. Upon review of the underlying water right, the applicants Randy and Donna Butler, have been deeded far more water right than land. The 88.75 acres that the change application indicates has historically been irrigated is the land that is owned by the Butlers. The amount of water right that is owned by the Butlers far exceeds the amount of land that this change application has been filed on and the Butlers have used all of the water for irrigation purposes on land they own or control. The Butler Spring averages a flow of 2.5 cfs, which has been utilized by the Butlers for irrigation purposes. The Butlers also own some supplemental water, but they have not had to use the supplemental source for this land due to the amount of water right that is owned at this location. Even though the land that is owned by the Butlers has historically been irrigated by this and other sources of water, it appears that there is sufficient water right to consider 355 acre-feet under this change application.

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The historic springs are located below the City dam and above the point where Lake Shore Irrigation Company diverts its water. The Lake Shore Irrigation Company has a right to all of the water that is available in the river at its point of diversion when the City Dam is diverting all of the water at its point of diversion. For this change application to be able to work, the only time that water would be available from the proposed locations would be when water is being bypassed at the City Dam. When all water available at the City Dam is being diverted at the dam, all diversion of water under this change application will have to cease.

Historically this water has been used for the irrigation of 88.75 acres, which would have required a diversion of 355 acre-feet ($88.75 \text{ acres} \times 4.0 \text{ acre-feet per acre}$) and depleted 200.6 acre-feet ($88.75 \text{ acres} \times 2.26 \text{ acre-feet per acre}$). The 2.26 acre-feet per acre depletion rate is taken from the "Consumptive Use of Irrigated Crops in Utah" Report No. 145, Utah State University, utilizing the Spanish Fork Power House station. These limitations will have to be imposed for this change application to be approved.

In evaluating the various elements of the underlying rights, it is not the intention of the State Engineer to adjudicate the extent of these rights, rather to provide sufficient definition of the rights to assure that other vested rights are not impaired by the change and no enlargement occurs. If, in a subsequent action, the court adjudicates that this right is entitled to either more or less water, the State Engineer will adjust the figures accordingly.

It is, therefore, **ORDERED** and Change Application Number 51-7805 (a27887) is hereby **APPROVED** subject to prior rights and the following conditions:

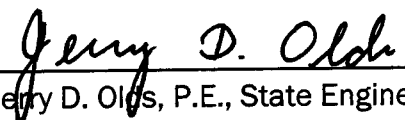
1. The applicants shall install permanent totalizing meters on all of the proposed sources and shall keep at least monthly records of all water diverted from the springs. The meters and the records shall be available to the State Engineer or his representative at all reasonable times as may be required to regulate this change application.
2. Diversion of water under this change application can only occur during times when water is being bypassed at the City Dam on the Spanish Fork River. Once water is no longer being bypassed at the City Dam, all diversion under this change application shall cease.
3. All diversion of water shall be under the direction of the duly appointed River Commissioner for the Spanish Fork River.
4. Any costs associated under this change application shall be the responsibility of the applicants. The amount of such costs shall be determined by the State Engineer and/or the River Commissioner.

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5. Upon submittal of proof of diversion and use of water, the applicants shall provide evidence that 88.75 acres of land have been retired from active irrigation for this change application.
6. This change application is limited to the diversion of 355 acre-feet and the depletion of 200.6 acre-feet annually.
7. The underlying water right is in the names of Randy and Donna Butler. The change application includes Spanish Fork City. The municipal use approved under this change is only authorized through the participation of the city. No approval is given to any other party for access and use of municipal facilities. Should the city cease participation, this approval shall no longer be valid.

This Decision is subject to the provisions of Rule R655-6-17 of the Division of Water Rights and to Sections 63-46b-13 and 73-3-14 of the Utah Code Annotated, 1953, which provide for filing either a Request for Reconsideration with the State Engineer or an appeal with the appropriate District Court. A Request for Reconsideration must be filed with the State Engineer within 20 days of the date of this Decision. However, a Request for Reconsideration is not a prerequisite to filing a court appeal. A court appeal must be filed within 30 days after the date of this Decision, or if a Request for Reconsideration has been filed, within 30 days after the date the Request for Reconsideration is denied. A Request for Reconsideration is considered denied when no action is taken 20 days after the Request is filed.

Dated this 17th day of December, 2003.



Jerry D. Olds, P.E., State Engineer

JDO:JER:kkh

Mailed a copy of the foregoing Memorandum Decision this 17th day of December, 2003, to:

Randy and Donna Butler
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Fairview, UT 84629

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Spanish Fork, UT 84660

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BY: Kelly K. Horne
Kelly K. Horne, Secretary